



Impaired Driving Scenarios

Scenario 1

- Defendant has been arrested for a 1st DWI offense with a blood alcohol level of .12. She has no prior arrests and is going through a contentious divorce with two school age children. She has been a junior high school teacher for 15 years. Her teacher certification and custody of children might be at stake if she enters a guilty plea or is convicted.
- What bond conditions would you impose at magistration? Is a deferred adjudication appropriate and if so what conditions should be imposed?

Scenario 2

- In Scenario 1, if the offense occurs after Sept. 1, 2019, and the defendant is convicted of the offense, what would be the amount of the **additional** fine under Transp. Code § 709.001(b):
 - \$3,000;
 - \$4,500; or
 - \$6,000?

Sec. 709.001. TRAFFIC FINE FOR CONVICTION OF CERTAIN INTOXICATED DRIVER OFFENSES.

(a) In this section, "offense relating to the operating of a motor vehicle while intoxicated" has the meaning assigned by Section 49.09, Penal Code.

(b) Except as provided by Subsection (c), in addition to the fine prescribed for the specific offense, a person who has been finally convicted of an offense relating to the operating of a motor vehicle while intoxicated shall pay a fine of:

(1) \$3,000 for the first conviction within a 36-month period;

(2) \$4,500 for a second or subsequent conviction within a 36-month period; and

(3) \$6,000 for a first or subsequent conviction if it is shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed.

(c) If the court having jurisdiction over an offense that is the basis for a fine imposed under this section makes a finding that the person is indigent, the court shall waive all fines and costs imposed on the person under this section.

Scenario 3

- On Sept. 2, 2019, the defendant is arrested for DWI with child passenger. It is his first DWI offense. At magistration are you **required** to impose ignition interlock as a bond condition? Could you choose **not** to do so? If so, under what circumstances would you not impose ignition interlock for this offense?
- Note: this issue might also be presented to you after information or indictment in a motion to modify bond conditions.

Scenario 4

- Defendant is arrested for DWI; his BAC was .11 and he had two prior DWI arrests within the previous five years. You order ignition interlock as a bond condition at magistration. Who makes sure he installs the interlock device? What steps should you take to make sure there is proper monitoring? How much can the defendant be required to pay for interlock monitoring or other monitoring of bond conditions? If there is a need for a bond revocation or modification hearing how do you know who should hear that motion (i.e. the magistrate or the trial court)?

Scenario 5

- Same facts as Scenario 4. But one month after the defendant installs the interlock device, he loses his job. He files a motion to modify the bond conditions so he is no longer required to have an interlock device since he says he can't afford it. What should you do?
- Note: This could occur pre- or post-indictment or information; therefore the motion could be heard either by the magistrate or the trial court.

Scenario 6

- Petitioner applies for an Occupational Driver's License. His license was suspended for Driving While License Invalid. He says he doesn't want any time or travel restrictions, so he has installed an ignition interlock device.
- Can you grant an ODL with no time or travel restrictions in this situation? After 9/1/19 how long will the license suspension period be for DWLI?

Scenario 7

- Petitioner applies for an Occupational Driver's License. His license was suspended because he failed a blood test by having a BAC of .10. Interlock was not ordered at magistration because he had no prior DWIs.
- As part of the order granting an ODL can you order him to install an ignition interlock device? What if he says he doesn't want any time or travel restrictions?

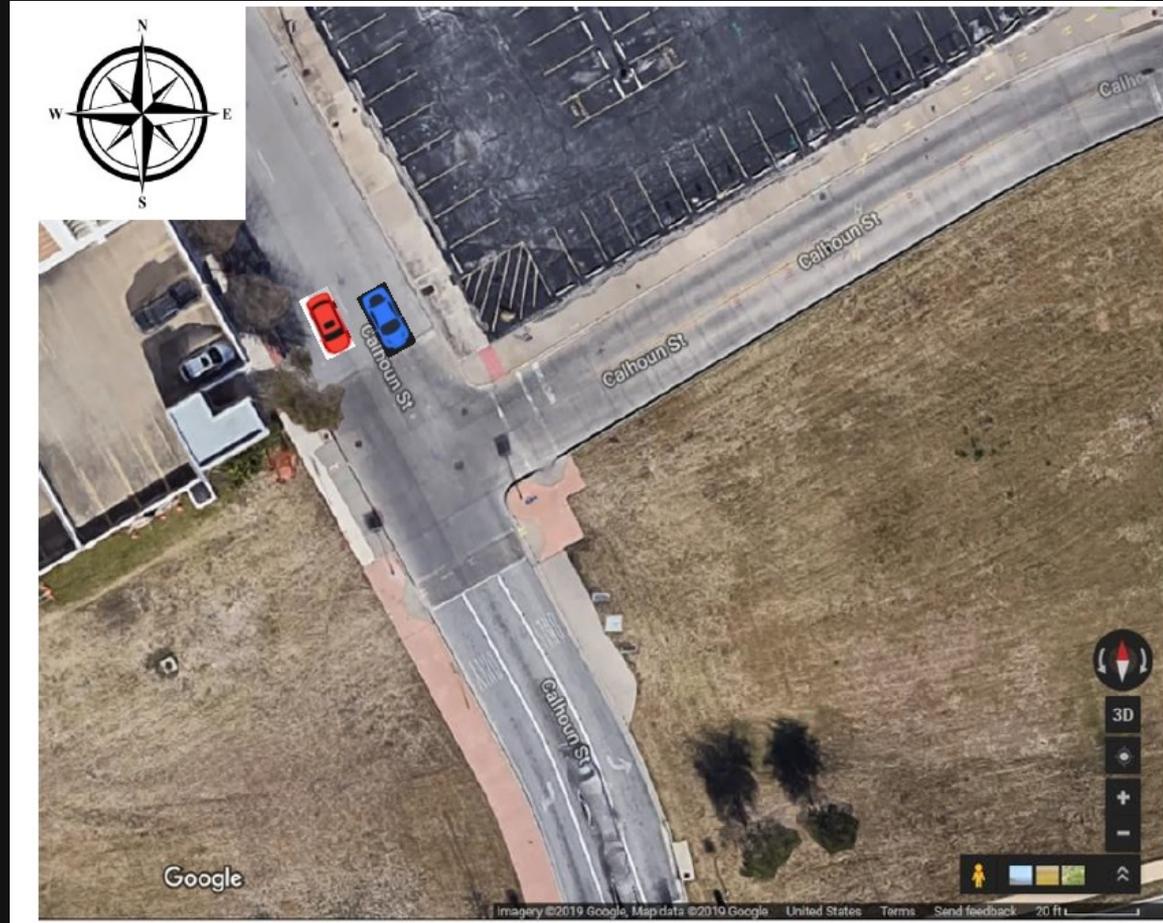
Scenario 8

- Defendant appears before you for magistration. He is charged with the offense of Driving While Intoxicated-Subsequent Offense. The police report indicates that the intoxicating substance was a controlled substance: cocaine. Defendant argues that an ignition interlock device is unnecessary because he wasn't under the influence of alcohol at the time of the arrest. Defendant requests that you waive the interlock requirement. Do you have discretion to waive it? If so, what would you do?

Scenario 9

- Two cars are stopped side by side at a red light travelling southbound on Calhoun Street. After they cross the intersection, both cars drive toward the center lane of the now 3-lane Calhoun Street. Both drivers activate their blinkers. The blue car stops short to avoid hitting the red car. An officer stops the red car for “failure to yield the right of way.” The officer notices the smell of alcohol and makes an arrest for DWI after a failed SFST. Was there reasonable suspicion to make the initial stop? If not, must a magistrate release the defendant on the DWI charge without setting bail or bond conditions on the ground that there was no reasonable suspicion for the initial traffic stop?

Scenario 9



Scenario 10

- In the 2019 Texas Court of Criminal Appeals case *State v. Martinez*, the court held that a warrant must be secured before a state **tests** a blood sample for alcohol (for the purposes of DWI) when it was taken during the normal medical treatment of an injured motorist. However, in *Mitchell v. Wisconsin*, the United States Supreme Court held on June 27, 2019, that a blood search warrant is not required before taking a blood sample from a person who is unconscious due to alcohol consumption. (Copies of both opinions are attached as handouts to your materials.)
- How would you reconcile these opinions? If a Texas motorist is unconscious and unable to consent to a blood test, must a search warrant be obtained before a blood sample is drawn and tested for BAC?

Scenario 11

- Petitioner's driver's license was suspended after he was stopped by law enforcement at 1:00 a.m. on a Friday night and refused to submit to a breath or blood alcohol test. At magistration he was ordered to install an ignition interlock device on every car he owns or drives. He has now applied for an Ignition Interlock Occupational Driver's License. He has presented proof of financial responsibility in the form of an SR22 and proof of installation of an ignition interlock device on each vehicle that he owns or operates. However, he has not shown an essential need to operate a motor vehicle.
- What would you do?

Scenario 12

- Defendant was arrested for 3rd DWI. The first one was 35 years prior; the second one was 26 years prior. He does not drive currently because of a license suspension. He has a minimum wage job at a local golf course and drives a golf cart during working hours. There is no spousal income; he lives with elderly mother. What bond conditions would you impose at magistration or on a motion to modify?



Questions?
Thank you!